

REMARKS

This is a full and timely response to the final Office Action mailed April 13, 2004, and to the Advisory Action mailed on July 8, 2004. The final Office Action and Advisory Action have rejected Claims 1-24. By the present amendment and response, independent claims 1, 11, and 20 have been amended, and claims 1-24 remain pending in the application. The prior rejection of the claims is respectfully traversed by the present response. This response is concurrently filed with a Request for Continued Examination, and consideration of the present amendments and remarks is requested. Since the amended claims are neither taught or suggested by the cited references of the Office Action, all of the pending claims are patentable over the cited art.

I. CLAIMS 1, 11, 20 ARE DIRECTED TO “ACCELERATING A HEALING PROCESS”

Independent claims 1, 11, and 20 have been amended to relate to “accelerating a healing process for” an injury rather than “therapeutically treating” an injury. The term “accelerating a healing process for” an injury excludes tissue destruction, and therefore the claims are distinguished from the cited references.

II. THE REJECTION UNDER 35 U.S.C. 103(a)

On page 2, the Office Action has rejected claims 1-6, 11, 15-21, and 23-24 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,088,613 to Unger (“the ‘613 patent” or “Unger”) in view of Talish et al. Applicants respectfully submit this argument from the prior response, and request reconsideration and withdrawal of the rejection.

Claims 1 and 20 each recite a “method for therapeutically treating an injury using ultrasound,” and claim 11 recites a “kit for therapeutically treating an injury using ultrasound.”

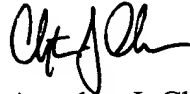
The Applicant's specification specifically discloses that the claimed invention utilizes "low intensity acoustic energy to accelerate the healing process for treating bone and tissue injuries." Specification, p. 6, line 15-26 (underlining supplied). In contrast, Unger recites a method that utilizes ultrasonic energy to target desired regions of gas-filled vesicles, wherein the "vesicles lower the cavitation threshold such that cavitation will occur within the target tissues at a low energy threshold resulting in tissue destruction." Unger, Col. 10, lines 30-45 (underlining supplied). Unger also discloses use of particular vesicles for "targeted intravascular use, e.g., to bind to a certain tissue such as a tumor." Col. 15, lines 15-22. Again, Unger appears to relate to destroying tissue, such as a tumor. In one specific example disclosed by Unger, high energy ultrasound is applied to ectopic fetal tissue in a 25 year old female patient with a suspected ectopic pregnancy. "By virtue of increased absorption if [sic] sound energy caused by the vesicles the ectopic fetal tissue is then destroyed by the ultrasound energy." Col. 40, lines 22-60 (underlining supplied). As shown in each of the citations from Unger, Unger relates to applying ultrasound for the purpose of tissue destruction rather than for the therapeutic purpose such as accelerating the healing process for treating bone and tissue injuries as in the Applicant's claimed invention. Since Unger relates to tissue destruction rather than treatment of an injury, Unger neither discloses nor suggests the Applicant's claimed invention.

Claims 2-10, 12-19, and 21-24 are ultimately dependent from either claims 1, 11 or 20, for which arguments of patentability have been advanced above. Therefore, dependent claims 2-10, 12-19, and 21-24 should also be allowable over the cited art.

CONCLUSION

Claims 1-24 are now in condition for allowance. The Examiner is invited and encouraged to contact the undersigned attorney of record at (404) 815-6048 if such contact will facilitate a Notice of Allowance. If any additional fees are due, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 11-0855.

Respectfully submitted,



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